

**WHATCOM COUNTY
EXECUTIVE'S OFFICE**

County Courthouse
311 Grand Avenue, Suite #108
Bellingham, WA 98225-4082



Jack Louws
County Executive

April 24, 2012

Camilla Faulk
Clerk of Washington State Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

Via Email: Camilla.Faulk@courts.wa.gov

RE: Lack of flexibility as currently proposed by standards for indigent criminal defense services, CrR 3.1, CrRJ 3.1, JuCr 9.2

Dear Supreme Court Justices:

The following comments reflect not only my opinion, but also those of the Director of our Public Defender's Office. The system for providing public defense is not broken in Whatcom County.

Our Public Defender's Office enjoys a well-deserved reputation, both locally and throughout the state, for providing high quality criminal defense to indigent citizens. The problem is not the standards themselves. The problem is *the lack of flexibility with the standards* as currently proposed. The County already takes these standards into consideration in determining appropriate staffing levels in the Public Defender's Office. Our Director, Jon Komorowski, refers to these standards when reporting to the Executive and County Council, as well as when he reports to the Public Defender Advisory Committee.

Proposed Standard 3.3 states, in part, that attorney caseloads should be assessed by the work load required. However, neither attorneys nor cases are fungible. Even the most experienced attorneys can only give an educated guesstimate as to how much work a particular case may require at the time the case is assigned to them. Obviously, capital cases are entirely different. In some instances, caseloads below an arbitrarily-established maximum will be excessive, and therefore, unethical, in accordance with the Rules of Professional Conduct, while in other instances, caseloads in excess of the maximum will be well within an experienced attorney's capabilities. Without flexibility this attorney will be sidelined once he or she achieves the caseload limit as set by Standard 3.4.

The lack of flexibility in Standard 3.4 regarding the total number of cases per attorney per year requires the individual jurisdictions to come up with a case weighting system where cases are numerically manipulated to produce a specific number with no idea in advance as to how much work the specific case is going to require.

As the Court is aware, numerous factors, all of which are beyond the ability of county government or defense attorney to control, affect when and how many cases are filed in particular jurisdictions. Factors such as demographics, change in the law, economics, policies of law enforcement, as well as the philosophy of the local prosecuting attorney affect not only the number of cases filed, but *when* those particular cases are filed. Without any flexibility in the standards as proposed, it is very difficult, if not impossible, to foresee how many cases will be filed in a given year. This creates serious budgeting issues which have a disproportionate impact on the smaller counties. I would respectfully submit that some provision for flexibility in terms of the total numbers per attorneys should be included in any adoption of proposed standards. The Public Defender has, in the past, and will, I'm sure, in the future continue to approach the Executive and the County Council when, and if, additional personnel are required.

Numerical standards are certainly required and justified in order to ensure that indigent citizens are provided with more than just minimal standards of criminal defense. As the Court is aware, when attorneys are in trial, they routinely work beyond banker's hours to include work at night and on weekends. The men and women of the Whatcom County Public Defender's Office are salaried employees, whose salaries are in parity with those of the Prosecuting Attorney. The men and women of that office, through their Director, have in the past communicated, and continue to communicate, regarding issues in the Public Defender's Office.

CONCLUSION

The Executive and County Council of Whatcom County have a long history of being receptive and sensitive to the needs of all component parts of the criminal justice system. This includes the Public Defender's Office. We support state standards that include a reasonable degree of flexibility. We cannot support the standards as currently proposed due to the lack of flexibility as contained in Standard 3.4.

Thank you for your consideration of our request to allow for flexibility in the standards you are considering for adoption. If you have any questions or concerns, please call my office at 676 6717 or Jon Komorowski at 360 676 6670.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jack Louws', with a stylized flourish extending to the right.

Jack Louws
County Executive

cc: Jon Komorowski, Director, Public Defender's Office
Whatcom County Council Members